

1927

## c 190 Landlord and Tenant Act

Ontario

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### Bibliographic Citation

*Landlord and Tenant Act*, RSO 1927, c 190

### Repository Citation

Ontario (1927) "c 190 Landlord and Tenant Act," *Ontario: Revised Statutes*: Vol. 1927: Iss. 2, Article 63.

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## 3. LANDLORD AND TENANT.

## CHAPTER 190.

## The Landlord and Tenant Act.

## INTERPRETATION.

## 1. In this Act,

Interpreta-  
tion.

- (a) "Crops" shall mean and include all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil; "Crops."
- (b) "Landlord" shall mean and include lessor, owner, the person giving or permitting the occupation of the premises in question and his and their heirs and assigns and legal representatives, and in Parts II and III shall also include the person entitled to the possession of the premises; "Landlord."
- (c) "Standing crops" shall mean crops standing or growing on the demised premises; "Standing crops."
- (d) "Tenant" shall mean and include lessee, occupant, sub-tenant, under-tenant, and his or their assigns and legal representatives. R.S.O. 1914, c. 155, s. 2. "Tenant."

## PART I.

## RELATION OF LANDLORD AND TENANT.

2. The relation of landlord and tenant shall not depend on tenure, and a reversion in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor shall it be necessary in order to give a landlord the right of distress that there shall be an agreement for that purpose between the parties. R.S.O. 1914, c. 155, s. 3. Relation of landlord and tenant.

## COVENANTS RUNNING WITH REVERSION, ETC.

3. All person being grantees or assignees of the King, or of any other person than the King, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the rent, or for doing Remedies available to assignees of reversion.

32 Hen.  
VIII. c. 34,  
s. 1.

of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for not performing of other conditions, covenants, or agreements, contained and expressed in the indentures of their said leases, demises or grants against all and every of the said lessees and grantees, their executors, administrators, and assigns as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times. R.S.O. 1914, c. 155, s. 4, *part*.

Lessee's cov-  
enant to run  
with rever-  
sion.

**4.** Rent reserved by a lease and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. R.S.O. 1914, c. 155, s. 5.

Grantee of  
reversion  
may enforce  
covenants.

**5.** The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease, shall extend to and be enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable.

Action of  
covenant, etc.,  
against  
assigns of  
grantors and  
lessors.

32 Hen.  
VIII. c. 34,  
s. 2.

**6.** All lessees and grantees of lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators, and assigns shall and may have like action, advantage, and remedy against all and every person who shall have any gift or grant of the King, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases as the same lessees or any of them, might and should have had against their said lessors, and grantors, their heirs, or successors. R.S.O. 1914, c. 155, s. 6, *part*.

Lessor's cov-  
enants to run  
with rever-  
sion.

Imp. Act  
44-45 V.  
c. 41, s. 11.

**7.** The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance

of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled. R.S.O. 1914, c. 155, s. 7.

#### APPORTIONMENT OF CONDITION OF RE-ENTRY.

**8.** Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease. R.S.O. 1914, c. 155, s. 8.

Apportionment of conditions on severance, etc.  
Imp. Act, 44-45 V. c. 41, s. 12.

#### SUB-LESSEE NOT TO HAVE RIGHT TO CALL FOR TITLE.

**9.—(1)** On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

On sub-demise title to leasehold reversion not to be required.

**(2)** This section applies only if and as far as the contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained. R.S.O. 1914, c. 155, s. 10 (1, 2).

Saving.  
Imp. Act, 44-45 Vic. c. 41, s. 13.

#### DEFECTS IN LEASES MADE UNDER POWERS OF LEASING.

**10.** Where, in the intended exercise of any power of leasing, whether derived under a statute or under any instrument lawfully creating such power, a lease has been, or shall hereafter be granted which is, by reason of the non-observance or omission of some condition or restriction or by reason of any other deviation from the terms of such power, invalid as against the person entitled, after the determination of the interest of the person granting such lease, to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled to the land comprised in such lease, such lease, in case the same was made in good faith and the lessee named therein, his heirs, exe-

Effect of lease where there is a deviation from terms of the power to demise.  
Imp. Act, 12-13 V. c. 26, s. 2.



cutors, administrators, or assigns have entered thereunder, shall be considered a contract for a grant at the request of the lessee, his heirs, executors, administrators, or assigns of a valid lease under such power, to the like purport and effect as such invalid lease, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound by such contract; but no lessee under any such invalid lease, his heirs, executors, administrators, or assigns, shall be entitled by virtue of any such contract to obtain any variation of such lease, where the persons who would have been bound by such contract are willing to confirm such lease without variation. R.S.O. 1914, c. 155, s. 11.

Proviso where the grantor or reversioner is willing to confirm.

What may be deemed a confirmation of invalid lease.

Imp. Act, 13-14 V. c. 17, s. 2.

**11.** Where, upon or before the acceptance of rent under any such invalid lease, any receipt, memorandum or note in writing confirming such lease is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease. R.S.O. 1914, c. 155, s. 12.

Duty of lessee to accept confirmation.

Imp. Act, 13-14 V. c. 17, s. 3.

**12.** Where, during the continuance of the possession taken under any such invalid lease, the person, for the time being entitled, subject to such possession, to the land comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation the lessee, his heirs, executors, or administrators, or any person who would have been bound by the lease if the same had been valid, upon the request of the person so able to confirm the same, shall be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing signed by the persons confirming and accepting, or by some other persons by them thereunto lawfully authorized; and, after confirmation and acceptance of confirmation, such lease shall be valid and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid. R.S.O. 1914, c. 155, s. 13.

Effect of invalid leases if grantor continues in ownership until he might lawfully grant the lease.

Imp. Act, 12-13 V. c. 26, s. 4.

**13.** Where a lease granted in the intended exercise of any power of leasing is invalid by reason that, at the time of the granting thereof, the person granting the same could not lawfully grant such lease, but the estate of such person in the land comprised in such lease has continued after the time when such, or the like lease, might have been granted by him in the lawful exercise of such power, such lease shall take effect and be as valid as if the same had been granted at such last mentioned time, and all the provisions of sections 10 to 15 shall apply to every such lease. R.S.O. 1914, c. 155, s. 14.

**14.** Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and, by reason of the determination of the estate or interest of such person or otherwise, such lease cannot have effect and continuance according to the terms thereof independently of such power such lease shall, for the purposes of the next preceding four sections, be deemed to be granted in the intended exercise of such power although such power is not referred to in such lease. R.S.O. 1914, c. 155, s. 15.

What shall be deemed an intended exercise of a power.

Imp. Act, 12-13 V. c. 26, s. 5.

**15.** Nothing in sections 10 to 15 shall extend to, prejudice or take away any right of action, or other right or remedy to which, but for the next preceding five sections, the lessee named in any such lease, his heirs, executors, administrators, or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or prejudice, or take away, any right of re-entry, or other right or remedy to which, but for such sections, the person granting such lease, his heirs, executors, administrators, or assigns, or other person, for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled for or by reason of any breach of the covenants, conditions, or provisos contained in such lease, and on the part of the lessee, his heirs, executors, administrators, or assigns to be observed and performed. R.S.O. 1914, c. 155, s. 16.

Saving the rights of the lessees under covenants for title and for quiet enjoyment, and the lessor's right of re-entry for breach of covenant, etc.

Imp. Act, 12-13 V. c. 26, s. 6.

#### MERGER, ETC., OF REVERSIONS.

**16.** Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers as against the tenant under the lease the next vested right to the land shall, to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease. R.S.O. 1914, c. 155, s. 18.

Effect of surrender or merger of reversion expectant on a lease in certain cases.

See Imp. Act, 8 and 9 V. c. 106, s. 2.

#### RIGHT OF RE-ENTRY.

**17.—(1)** In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, shall remain unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand thereof shall have been made, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, re-possess and enjoy as of his former estate.

Right of re-entry on non-payment of rent.

Implied agree-  
ment for re-  
entry on con-  
viction of  
tenant for  
keeping  
disorderly  
house.  
R.S.C. c. 146.

(2) In every such demise as aforesaid there shall be deemed to be included an agreement that if the tenant or any other person shall be convicted of keeping a disorderly house, within the meaning of *The Criminal Code*, on the demised premises, or any part thereof, it shall be lawful for the landlord at any time thereafter, into the demised premises, or any part thereof, to re-enter and the same to have again, re-possess and enjoy as of his former estate. R.S.O. 1914, c. 155, s. 19.

#### FORFEITURE OF LEASES.

Interpreta-  
tion.

**18.**—(1) In this section and the next following four sections,

"Action."

(a) "Action" shall include any proceedings under Part III;

"Lease."

Imp. Act,  
44-45 V. c. 41,  
s. 14, and  
55-56 V.  
c. 13, s. 5.

(b) "Lease" shall include an original or derivative under-lease and a grant at a fee farm rent or securing a rent by condition and an agreement for a lease where a lessee has become entitled to have his lease granted;

"Lessee."

(c) "Lessee" shall include an original or derivative under-lessee and the heirs, executors, administrators and assigns of a lessee and a grantee under such a grant and his heirs and assigns;

"Lessor."

(d) "Lessor" shall include an original derivative under-lessor and the heirs, executors, administrators and assigns of a lessor and a grantor under such a grant and his heirs and assigns;

"Mining  
lease."

Imp. Act,  
44-45 V.  
c. 41, s. 2 (xi.)

(e) "Mining Lease" shall mean a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and shall include a grant or license for mining purposes;

"Underlease."

(f) "Under-lease" shall include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

"Under-  
lessee."

(g) "Under-lessee" shall include any person deriving title under or from an under-lessee. R.S.O. 1914, c. 155, s. 20 (1), *part*.

Restrictions  
on and relief  
against for-  
feiture of  
leases.  
Imp. Act,  
44-45 V. c. 41,  
s. 14 (1),  
55-56 V.  
c. 13, s. 5.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action, entry, or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and



if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach. R.S.O. 1914, c. 155, s. 20 (2), *part*.

**19.**—(1) Where a lessor is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or summary application to a Judge of the Supreme Court brought by himself, apply to the Court for relief; and the Court may grant such relief, as having regard to the proceedings and conduct of the parties under the provisions of the preceding section and to all the other circumstances the Court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the Court may deem just. R.S.O. 1914, c. 155, s. 20 (3), *part*. Relief against forfeiture.

(2) This section and section 18 shall apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease, in pursuance of the directions of a statute. Where right of entry is under a statute.

(3) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach. Lease until breach.

(4) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action the proceedings in the action shall be forever stayed. When proceedings may be stayed.

(5) Where relief is granted under the provisions of this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease. Position of lessee.

(6) This section shall apply to leases made either before or after the commencement of this Act and shall apply notwithstanding any stipulation to the contrary. Application of section.

(7) This section shall not extend,—

- (a) to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the lessee making an assignment for the benefit of creditors under *The Assignments and Preferences* Exceptions. Generally. Rev Stat. c. 162.



*Act*, or on the taking in execution of the lessee's interest; or

Mining leases.

- (b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

Condition for relief for non-insurance.

(8) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms which the Court may impose, upon the term that the insurance is affected. R.S.O. 1914, c. 155, s. 20 (4-10).

#### LEASES, UNDER-LEASES, FORFEITURE.

Protection of under-lessees on forfeiture of superior lease.

55-56 V.  
(Imp.) c. 13,  
s. 4.

**20.** Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action or summary application to a judge of the Supreme Court brought by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rents, costs, expenses, damages, compensation, giving security or otherwise, as the Court in the circumstances of each case shall think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease. R.S.O. 1914, c. 155, s. 21, *part*.

Who must be parties to an action to enforce right of re-entry or forfeiture.

**21.** Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper registry or land titles office, shall be made a party to the action. R.S.O. 1914, c. 155, s. 22.

License to assign not to be unreasonably withheld.

**22.**—(1) In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition or agreement shall, unless the

lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld. R.S.O. 1914, c. 155, s. 23, *part*.

(2) Where the landlord refuses or neglects to give a license or consent to an assignment or sub-lease a judge of the county or district court, upon the application of the tenant or of the assignee or sub-tenant, made by way of originating notice according to the practice of the court, may make an order determining whether or not the license or consent is unreasonably withheld, and where the judge is of opinion that the license or consent is unreasonably withheld permitting the assignment or sub-lease to be made, and such order shall be the equivalent of the license or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease shall not be a breach thereof. 1925, c. 47, s. 2.

Application to court where consent to assignment or sub-letting withheld.

#### LICENSES.

**23.** Where a license to do any act which, without such license, would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease, is given to a lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but shall not prevent a proceeding for any subsequent breach unless otherwise specified in such license; and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made punishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done. R.S.O. 1914, c. 155, s. 24.

Restriction of effect of license under power contained in lease, etc.,

Imp. Act, 22-23 V. c. 35, s. 1.

**24.** Where in a lease there is a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a license has been or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or has been or is given to a lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or

Restricted operation of partial licenses.

Imp. Act, 22-23 V. c. 35, s. 2.

co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license. R.S.O. 1914, c. 155, s. 25.

#### WAIVER OF COVENANT.

Restriction of effect of waiver of covenant.

Imp. Act, 23-24 V. c. 38, s. 6.

**25.** Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his heirs, executors, administrators or assigns, is proved to have taken place in any one particular instance such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears. R.S.O. 1914, c. 155, s. 26.

#### COVENANT TO PAY TAXES.

Covenant to pay taxes not to include taxes for local improvements.

**26.**—(1) Unless it is otherwise specifically provided in a lease made after the 1st day of September, 1897, a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements. R.S.O. 1914, c. 155, s. 27 (1), *part*.

Effect of altering form of covenant.

Rev. Stat. c. 144.

(2) In the case of a lease made under *The Short Forms of Leases Act* where the words "except for local improvements" are struck out or omitted from the covenant number 3 in Schedule B of that Act such striking out or omission shall be deemed to be a specific provision otherwise made within the meaning of subsection 1. R.S.O. 1914, c. 155, s. 27 (2).

(*As to Drainage Assessment see The Municipal Drainage Act, Rev. Stat. c. 241, s. 91.*)

#### LENGTH OF NOTICES TO QUIT.

Notice to quit in case of weekly or monthly tenancies.

**27.** A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy. R.S.O. 1914, c. 155, s. 28.

#### TENANTS TO NOTIFY LANDLORDS.

Penalty on tenant receiving writ for recovery of land and not notifying his landlord.

**28.** Every tenant to whom a writ in an action for the recovery of land has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his landlord's bailiff or receiver; and, if he omits so to do, he shall be answerable to his landlord for all damages sustained by him by reason of the failure to give such notice. R.S.O. 1914, c. 155, s. 29.

## EXEMPTIONS FROM DISTRESS.

**29.**—(1) The goods and chattels exempt from seizure under execution shall not be liable to seizure by distress by a landlord for rent, except as hereinafter provided. Goods exempt from execution to be exempt from distress.

(2) In the case of a monthly tenancy the exemption shall only apply to two months' arrears of rent. Monthly tenancies.

(3) The person claiming such exemption shall select and point out the goods and chattels which he claims to be exempt. Selection of exempted goods.  
R.S.O. 1914, c. 155, s. 30.

**30.**—(1) A landlord shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favour of a person claiming title under an execution against the tenant, or in favour of a person whose title is derived by purchase, gift, transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord, nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any other relative of his, if such other relative lives on the premises as a member of the tenant's family, or by any person whose title is derived by purchase, gift, transfer or assignment from any relative to whom such restriction does not apply. Goods on premises not property of tenant to be exempt. Exceptions.

(2) Nothing in this section shall exempt from distress goods or chattels in a store or shop managed or controlled by an agent or clerk for the owner of such goods or chattels where such clerk or agent is also the tenant and in default, and the rent is due in respect of the store or shop or premises rented therewith and thereto belonging, if such goods or chattels would have been liable to seizure but for this Act. Goods in store managed by agent who is in default.

(3) Subject to the provisions of section 31, "tenant" in this section shall include a subtenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether or not he has attorned to or become the tenant of the landlord. R.S.O. 1914, c. 155, s. 31. "Tenant," meaning of in this section.



## PROTECTION OF GOODS OF LODGERS FROM DISTRESS.

Declaration by boarder or lodger that immediate tenant has no property in goods distrained.

**31.**—(1) If a superior landlord distrains or threatens to distrain any goods or chattels of a boarder or lodger for arrears of rent due to him by his immediate tenant, the boarder or lodger may serve the superior landlord, or the bailiff or other person employed by him to levy the distress, with a statutory declaration made by the boarder or lodger setting forth that the immediate tenant has no right of property or beneficial interest in such goods or chattels, and that they are the property or in the lawful possession of such boarder or lodger, and also setting forth whether any and what amount by way of rent, board or otherwise is due from the boarder or lodger to the immediate tenant; and to such declaration shall be annexed a correct inventory, subscribed by the boarder or lodger, of the goods and chattels mentioned in the declaration; and the boarder or lodger may pay to the superior landlord, or to the bailiff or other person employed by him, the amount, if any, so due, or so much thereof as is sufficient to discharge the claim of the superior landlord.

Penalty for improper levy.

(2) If the superior landlord, bailiff or other person, after being served with the declaration and inventory, and after the boarder or lodger has paid or tendered to him the amount, if any, which, by subsection 1, the boarder or lodger is authorized to pay, levies or proceeds with a distress on the goods or chattels of the boarder or lodger the superior landlord, bailiff or other person shall be guilty of an illegal distress, and the boarder or lodger may replevy such goods or chattels in any court of competent jurisdiction; and the superior landlord shall also be liable to an action, at the suit of the boarder or lodger, in which the truth of the declaration and inventory may be inquired into.

Effect of payments by boarder or lodger.

(3) Any payment made by a boarder or lodger pursuant to subsection 1 shall be a valid payment on account of the amount due from him to the immediate tenant. R.S.O. 1914, c. 155, s. 32.

Duty of tenant claiming exemption to surrender premises.

**32.**—(1) A tenant in default for non-payment of rent shall not be entitled to the benefit of the exemption provided for by section 29 unless he gives up possession of the premises forthwith or is ready and offers to do so.

To whom offer of surrender to be made.

(2) The offer may be made to the landlord or to his agent; and the person authorized to seize and sell the goods and chattels, or having the custody of them for the landlord, shall be considered an agent of the landlord for the purpose of the offer and surrender to the landlord of possession. R.S.O. 1914, c. 155, s. 33.

**33.**—(1) Where a landlord desires to seize exempted goods Seizure of exempted goods. he shall, after default has been made in the payment of rent and before or at the time of seizure, serve the tenant with a notice, Form 1.

(2) The surrender of possession in pursuance of the notice Effect of surrender of possession. shall be a determination of the tenancy. R.S.O. 1914, c. 155, s. 34.

**34.**—(1) A tenant may set off against the rent due a debt Right of set-off. due to him by the landlord.

(2) Notice of the claim of set-off, Form 2, may be given Notice thereof. before or after the seizure.

(3) When the notice is given the landlord shall be entitled Effect of notice. to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to the tenant which is mentioned in the notice. R.S.O. 1914, c. 155, s. 35.

**35.**—(1) Service of notices under sections 27, 33 and 34 Service of notices as to exemptions or set-off. shall be made either personally or by leaving the same with a grown-up person in and apparently residing on the premises occupied by the person to be served.

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises Posting up notice in lieu of service. shall be good service. R.S.O. 1914, c. 155, s. 36.

**36.** No proceeding under the next preceding four sections shall be rendered invalid by any defect in form. Formal defects not to invalidate. R.S.O. 1914, c. 155, s. 37.

**37.**—(1) In case of an assignment for the general benefit Lien of landlord in bankruptcy, etc. of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the preferential lien of the landlord for rent shall be restricted to the arrears of rent due during the period of three months next preceding, and for three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, liquidator or trustee for the period of his occupation.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement or the legal effect thereof, Rights of assignee. in case of an assignment for the general benefit of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or auth-

orized assignment has been made by or against a tenant, the assignee, liquidator or trustee may at any time within three months thereafter for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by such lease or agreement, and he may upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who will covenant to observe and perform its terms and agree to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor, and who shall on application of the assignee, liquidator or trustee, be approved by a judge of the Supreme Court of Ontario as a person fit and proper to be put in possession of the leased premises. 1924, c. 42, s. 2, *part*.

Election to  
surrender.

**38.**—(1) The assignee, liquidator or trustee shall have the further right at any time before so electing by notice in writing to the landlord, to surrender possession or disclaim any such lease, and his entry into possession of the leased premises and their occupation by him, while required for the purposes of the trust estate, shall not be deemed to be evidence of an intention on his part to elect to retain possession pursuant to the provisions of this section.

Rights of  
sub-tenants.

(2) Where the assignor, or person or firm against whom a receiving order has been made in bankruptcy, or a winding up order has been made, being a lessee, has, before the making of the assignment or such order demised by way of under-lease, approved or consented to in writing by the landlord, any premises and the assignee, liquidator or trustee surrenders, disclaims or elects to assign the lease the under-lessee shall, if he so elects in writing within three months of such assignment or order, stand in the same position with the landlord as though he were a direct lessee from the landlord but subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent company was subject to under the lease at the date of the assignment or order, but the under-lessee shall in such event be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the debtor, and if such last mentioned rental was greater than that payable by the debtor to the said landlord the under-lessee shall be required to covenant to pay to the landlord the like greater rental.

Settlement  
of disputes.

(3) In the event of any dispute arising under this section such dispute shall be disposed of upon a summary application by a judge of the Supreme Court of Ontario. 1924, c. 42, s. 2, *part*.



## DISTRESS.

**39.** Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rents seek, as in case of rent reserved upon lease. R.S.O. 1914, c. 155, s. 39.

**40.** A person having any rent due and in arrear, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if such distress is made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due. R.S.O. 1914, c. 155, s. 40.

**41.** A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life. R.S.O. 1914, c. 155, s. 41.

**42.** Distress shall be reasonable. R.S.O. 1914, c. 155, s. 42, *part.*

## PROPERTY LIABLE TO DISTRESS.

**43.** A person having rent due and in arrear upon any demise, lease, or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent, and may lock up or detain the same, in the place where the same is found, for or in the nature of a distress until the same is replevied; and, in default of the same being replevied, may sell the same after appraisement thereof to be made; but such grain or hay so distrained shall not be removed by the person distraining, to the damage of the owner thereof out of the place where the same is found and seized, but shall be kept there, as impounded, until it is replevied or sold in default of replevying. R.S.O. 1914, c. 155, s. 43.

**44.—(1)** A landlord may take and seize, as a distress for arrears of rent, any cattle or live stock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

**(2)** Subject to the provisions of subsection 4, a landlord may take and seize standing crops as a distress for arrears

Distress for  
rents seek.  
4 Geo. II. c.  
28, s. 5.

Distress for  
arrears on  
leases deter-  
mined.

8 Anne,  
c. 18, (or c.  
14 in Ruff-  
head's Ed.)  
ss. 6 and 7.

Limitation  
of such  
distress.

Right of  
persons en-  
titled to  
rent during  
life of an-  
other to  
recover same  
after death.  
32 Hen.  
VIII., c. 37,  
s. 4.

Distress to  
be reason-  
able.  
52 Hen.  
III., (St. of  
Marlbridge),  
c. 4, part;  
St. of un-  
cert. date,  
(Imp. Rev.  
St., 1870, p.  
126).

Right to  
distrain  
grain, etc.

2 W. & M.  
Sess. 1, c. 5,  
s. 3.

Saving.

Right to dis-  
train cattle  
or live stock.

Right to  
distrain  
standing  
crops.



Disposal  
thereof.

11 Geo. II. c.  
19, s. 8.

of rent, and may cut, gather, make, cure, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charges of such distress, appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, cured and made and not before.

Tenant's  
right to  
notice of  
place of  
keeping.

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

Satisfying  
distress of  
standing  
crops.

11 Geo. II. c.  
19, s. 9.

(4) If, after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant.

Sale of  
standing  
crops.

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same.

Liability  
of purchaser  
of standing  
crops.

(6) Any person purchasing standing crops at such sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it. R.S.O. 1914, c. 155, s. 44.

Conditional  
exemption  
of certain  
beasts.

Stat. of  
uncertain  
date. Imp.  
Rev. St.  
1870, p. 126.

**45.** Beasts that gain the land and sheep shall not be distrained if there are other chattels sufficient to satisfy the demand. R.S.O. 1914, c. 155, s. 45, *part*.

#### WHERE DISTRESS MAY BE TAKEN.

Chattels not  
to be dis-  
trained off  
the premises.  
52 Hen. III.  
(St. Marl-  
bridge),  
c. 15.

**46.** Save as herein otherwise provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent. R.S.O. 1914, c. 155, s. 46, *part*.

## FRAUDULENT REMOVAL.

**47.**—(1) Where any tenant, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is reserved, due, or made payable, fraudulently or clandestinely conveys away, or carries off or from such premises his goods or chattels to prevent the landlord from distraining the same for arrears of rent so reserved, due, or made payable the landlord or any person by him for that purpose lawfully empowered, may, within thirty days next ensuing such conveying away or carrying off, take and seize such goods and chattels wherever the same are found, as a distress for such arrears of rent, and the same sell or otherwise dispose of in such manner as if such goods and chattels had actually been distrained by the landlord upon such premises for such arrears of rent.

Landlords may distrain goods fraudulently carried off the premises.

11 Geo. II. c. 19, s. 1.

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud. R.S.O. 1914, c. 155, s. 47.

Exception.

11 Geo. II. c. 19, s. 2.

**48.** Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened, or otherwise secured so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a constable or peace-officer who is hereby required to aid and assist therein, and, in case of a dwelling-house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein, and, in the daytime, break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away. R.S.O. 1914, c. 155, s. 48.

Right of landlord to break open houses where goods fraudulently secured.

11 Geo. II. c. 19, s. 7.

**49.** If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully and knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of such goods, to be recovered by action in any court of competent jurisdiction. R.S.O. 1914, c. 155, s. 49.

Penalty for fraudulently removing, or assisting to remove, goods.

11 Geo. II. c. 19, s. 3.

## IMPOUNDING DISTRESS.

Beasts dis-  
trained not  
to be driven  
out of the  
municipality.  
3 Edw. I.  
(St. of  
Westminster  
Prim.) c. 16.  
and 1 P. & M.  
c. 12, s. 1,  
part.

**50.**—(1) Beasts or cattle distrained shall not be removed or driven out of the city, town, village or township in which they are distrained, except to a fitting pound or enclosure within the same county or district not more than three miles distant from the place where the distress is taken. R.S.O. 1914, c. 155, s. 50 (1), *part*.

Impounding.  
1 P. & M.  
c. 12, s. 1,  
part.

(2) No cattle, or other goods or chattels, distrained or taken by way of distress for any cause at one time shall be impounded in several places.

Penalty.

(3) Every person offending against this section shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him.

Where goods  
may be  
impounded.

11 Geo. II.  
c. 19, s. 10.

(4) Any person lawfully taking any distress for any kind of rent may impound, or otherwise secure the distress so made, in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may appraise, sell and dispose of the same upon the premises; and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof. R.S.O. 1914, c. 155, s. 50 (2-4).

## POUND BREACH, OR RESCUE.

Pound  
breach or  
rescue, dam-  
ages for.

2 W. & M.  
Sess. 1, c. 5,  
s. 4.

**51.** Upon any pound breach or rescue of goods or chattels distrained for rent the person offending, or the owner of the goods distrained, in case the same are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him. R.S.O. 1914, c. 155, s. 51.

## SALE OF GOODS DISTRAINED.

Sale of  
distress,  
when it may  
be made.

(See 2 W. &  
M. Sess. 1,  
c. 5, s. 1.

**52.** Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then, after such distress and notice and the expiration of such five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise the same truly, according to the best of their understandings, a memorandum of which oath is to be indorsed on the inventory, and after such appraisement the

Appraise-  
ment.



person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress, appraisement and sale, and shall hold the overplus, if any, for the owner's use and pay the same over to him on demand. R.S.O. 1914, c. 155, s. 52.

#### WRONGFUL OR IRREGULAR DISTRESS.

**53.** Where any distress is made for any kind of rent justly due, and any irregularity or unlawful act shall afterwards be done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by such unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby. R.S.O. 1914, c. 155, s. 53.

Irregularities not to make distress void *ab initio*.  
11 Geo. II. c. 19, s. 19.

**54.**—(1) A distrainer who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

Wrongful distress, 52 Hen. III. c. 4, in part; and 3 Edw. I., c. 16.

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained and sold, his executors, or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale. R.S.O. 1914, c. 155, s. 54.

Where no rent due.

2 W. & M. Sess. 1, c. 5, s. 5.

#### GOODS TAKEN IN EXECUTION NOT TO BE REMOVED WITHOUT PAYMENT OF RENT.

**55.**—(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise shall not be liable to be taken by virtue of any execution issued out of the Supreme Court or out of a county or district court on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

Goods taken in execution not to be removed till rent paid.

8 Anne, c. 18 (or c. 14 in Ruffhead's Ed.) s. 1.

(2) If such arrears exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

When execution may be proceeded with.



What to be  
paid to  
execution  
creditor.

(3) The sheriff or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money. R.S.O. 1914, c. 155, s. 55.

*(As to executions out of Division Courts, see The Division Courts Act, Rev. Stat. c. 95, s. 209.)*

#### CROPS SEIZED UNDER EXECUTION.

Liability of  
growing  
crops seized  
and sold  
under execu-  
tion for ac-  
cruing rent.

**56.** Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution such crops, so long as the same remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crops by any such sheriff or other officer. R.S.O. 1914, c. 155, s. 56.

Imp. Act  
14-15 V. c.  
25, s. 2.

#### LIABILITY OF TENANTS OVERHOLDING.

Penalty of  
double value  
for over-  
holding.

**57.** Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over such land or any part thereof after the determination of such term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, such tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief. R.S.O. 1914, c. 155, s. 57.

4 Geo. II. c.  
28, s. 1.

Penalty of  
double rent  
for overhold-  
ing after  
tenant gives  
notice to  
quit.

**58.** Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in such notice, and does not accordingly deliver up the possession thereof at the time mentioned in such notice the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid while such tenant continues in possession. R.S.O. 1914, c. 155, s. 58.

11 Geo. II.  
c. 19,  
s. 18.

## EXECUTORS OR ADMINISTRATORS.

**59.** The executors or administrators of a landlord may distrain for the arrears of rent due to such landlord in his lifetime, and may sue for the same in like manner as such landlord might have done if living, and the powers and provisions contained in this Act relating to distresses for rent shall be applicable to the distresses so made. R.S.O. 1914, c. 155, s. 59.

Right of personal representatives to distrain for arrears.

## ATTORNMENT.

**60.** Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void; and the possession of his landlord shall not be deemed to be changed, altered or affected by any such attornment; but nothing herein shall vacate or affect any attornment made pursuant to and in consequence of a judgment or order of a court, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage has become forfeited. R.S.O. 1914, c. 155, s. 60.

Nullity of attornment to stranger.

11 Geo. II. c. 19, s. 11.

**61.**—(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

Attornment of tenant, in what cases not necessary.

4-5 Anne, c. 3 (or c. 16, in Ruffhead's Ed.), s. 9.

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of such grant by the grantee. R.S.O. 1914, c. 155, s. 61.

Tenant not to be prejudiced.

4-5 Anne, c. 3, (or c. 16, in Ruffhead's Ed.) s. 10.

## RENEWALS—CHIEF LEASE MAY BE RENEWED WITHOUT SURRENDER OF UNDER-LEASE.

**62.**—(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under-leases, be as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

Chief leases may be renewed without surrendering all the under-leases.

4 Geo. II., c. 28, s. 6.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-lease for

Rights and remedies of parties thereunder.

the rents and duties reserved by such new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived, as he would have had if such former lease had been still continued or as he would have had if the respective under-leases had been renewed under such new principal lease. R.S.O. 1914, c. 155, s. 62.

#### RENEWAL OF LEASE BY ABSENTEES.

Who may  
renew on be-  
half of  
persons out  
of Ontario.

Imp. Act 11  
Geo. IV., and  
1 W. IV., c.  
65, s. 18.

**63.**—(1) Where any person who, in pursuance of any covenant or agreement in writing, if within Ontario and amenable to the process of the Supreme Court, might be compelled to execute any lease by way of renewal, is not within Ontario, or is not amenable to the process of the Court, the Court, upon the motion of any person entitled to such renewal, whether such person is or is not under any disability, may direct such person as the Court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

Validity of  
such new  
lease.

(2) A new lease executed by the person so appointed shall be as valid as if the person in whose name the same was made was alive and not under any disability and had himself executed it.

Discretion  
of court  
to direct  
action to be  
brought.

(3) In every such case it shall be in the discretion of the Court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

Conditions.

Imp. Act 11  
Geo. IV., and  
1 W. IV., c.  
65, s. 20.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement unless the sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

Premiums,  
how to be  
paid.

Imp. Act 11  
Geo. IV. and  
1 W. IV., c.  
65, s. 21.

(5) All sums of money which are had, received or paid for, or on account of, the renewal of any lease by any person out of Ontario or not amenable to the process of the Supreme Court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the Supreme Court to such account, and be applied and disposed of as the Court shall direct.

Costs.

Imp. Act 11  
Geo. IV. and  
1 W. IV., c.  
65, s. 35.

(6) The Court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the Court shall deem proper. R.S.O. 1914, c. 155, s. 63.



## PART II.

## DISPUTES AS TO RIGHT TO DISTRAIN.

**64.** In this Part,Interpreta-  
tion.

“Judge” shall mean judge of the county or district court of the county or district in which a distress to which this Part applies is made. R.S.O. 1914, c. 155, s. 64.

**65.**—(1) Where goods or chattels are distrained by a landlord for arrears of rent, and the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, or the tenant claims to set off against the rent a debt which the landlord disputes, the landlord or the tenant may apply to the judge to determine the matters so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just. R.S.O. 1914, c. 155, s. 65, *part*.

Disputes as  
to right to  
distrain.

(2) Where the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the landlord or the tenant may before any distress has been made apply to the judge to determine the matter so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just. 1923, c. 34, s. 2, *part*.

Application  
to judge by  
landlord or  
tenant.

**66.** Where notice of such an application has been given to the landlord or tenant as the case may be, the judge, pending the disposition of it by him, may make such order as he may deem just for the restoration to the tenant of the whole or any part of the goods or chattels distrained, or preventing a distress being made, upon the tenant giving security, by payment into court or otherwise as the judge may direct, for the payment of the rent which shall be found due to the landlord and for the costs of the distress and of the proceedings before the judge and of any appeal from his order, or such of them as the tenant may be ordered to pay. R.S.O. 1914, c. 155, s. 66, *part*.

Order of  
judge pend-  
ing deter-  
mination of  
dispute.

**67.** The judge shall have jurisdiction and authority to determine any question arising upon the application which the court of which he is judge has jurisdiction to determine in an action brought in that court. R.S.O. 1914, c. 155, s. 67.

Jurisdiction  
of judge.

**68.** Where the amount of the rent claimed by the landlord exceeds \$800, or where any question is raised which a county or district court would not have jurisdiction to try in an action brought in such court, the judge shall not, without the consent in writing of the landlord and the tenant deal with the application summarily, but shall direct an action

When judge  
to direct  
that action  
be brought  
or issue  
tried.



to be brought or an issue to be tried in the Supreme Court for the determination of the matters in dispute. R.S.O. 1914, c. 155, s. 68, *part*.

Interim  
order for  
restoration  
of goods on  
security be-  
ing given,  
etc.

**69.**—(1) Where the judge, under the next preceding section, directs an action to be brought or an issue to be tried he shall have the like power as to the restoration to the tenant of the goods or chattels or of any part of them and to the prevention of a distress being made as is conferred by section 66, and where it is exercised the security shall be as provided in that section except that, as to costs, it shall be not only for the costs of the proceedings before the judge but also for the costs of the action or issue, including any appeal therein or such of them as the tenant may be ordered to pay. R.S.O. 1914, c. 155, s. 69 (1), *part*.

Cost of  
proceedings.

(2) The Supreme Court shall determine by whom and in what manner the costs of the action or issue and of the application to the judge shall be borne and paid.

Entry of  
judgment.

(3) Judgment may be entered in accordance with the direction of the court, made at or after the trial, and may be enforced in like manner as a judgment of the Court. R.S.O. 1914, c. 155, s. 69 (2, 3).

When deci-  
sion of judge  
to be final.

**70.** Where the amount claimed by the landlord does not exceed \$100 the decision of the judge shall be final. R.S.O. 1914, c. 155, s. 70.

Appeal from  
summary  
determina-  
tion.

**71.** Where the amount claimed by the landlord exceeds \$100 an appeal shall lie from any order of the judge, made on an application to him under the provisions of section 65, by which the matters in dispute are determined, in like manner as if the same were a judgment of the court of which he is judge pronounced in an action. R.S.O. 1914, c. 155, s. 71.

Appeal when  
action  
brought or  
issue tried.

**72.** Where an issue is tried there shall be the same right of appeal from the judgment as if the judgment had been pronounced in an action. R.S.O. 1914, c. 155, s. 72.

Scale of  
costs.

**73.** Where the amount claimed by the landlord does not exceed \$100 the costs of the proceedings before the judge shall be on the division court scale, and where the amount claimed exceeds \$100 they shall be on the county court scale, except in an action or issue in the Supreme Court directed under section 68. R.S.O. 1914, c. 155, s. 73.

Other reme-  
dies of ten-  
ant.

**74.** Nothing in this Part shall take away or affect any remedy which a tenant may have against his landlord or require a tenant to proceed under this Part instead of by bringing an action, but where, instead of proceeding under this Part, he proceeds by action the court in which the action is brought, if of opinion that it was unnecessarily brought and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant, although he succeeds, to pay any additional costs occasioned by his having brought the action. R.S.O. 1914, c. 155, s. 74.

## PART III.

## OVERHOLDING TENANTS.

**75.**—(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the judge of the county or district court of the county or district in which the land lies to make the inquiry hereinafter provided for.

Application  
to county  
court judge  
against over-  
holding  
tenant.

(2) The judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

Inquiring  
and deter-  
mination.

(3) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application. R.S.O. 1914, c. 155, s. 75.

Notice there-  
of to be  
served on  
the tenant.

**76.** The proceedings under this Part shall be intituled in the county or district court of the county or district in which the land lies, and shall be styled:

Proceedings,  
how  
intituled.

"In the matter of (*giving the name of the party complaining*), Landlord, against (*giving the name of the party complained against*) Tenant."

R.S.O. 1914, c. 155, s. 76.

**77.**—(1) If, at the time and place appointed, the tenant fails to appear, the judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession, Form 3, directed to the sheriff

Proceedings  
in default of  
appearance.

of the county or district in which the land lies to be issued commanding him forthwith to place the landlord in possession of the land.

In case of  
appearance.

(2) If the tenant appears the judge shall, in a summary manner, hear the parties and their witnesses, and examine into the matter, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ. R.S.O. 1914, c. 155, s. 77.

Power of  
amendment.

**78.** The judge shall have the same power to amend or excuse irregularities in the proceedings as he would have in an action.

Appeal.

Rev. Stat.  
c. 91.

**79.—**(1) An appeal shall lie to a Divisional Court from the order of the judge granting or refusing a writ of possession and the provisions of *The County Courts Act* as to appeals shall apply to such an appeal.

Discharging  
order for  
possession on  
appeal.

(2) If the Divisional Court is of opinion that the right to possession should not be determined in a proceeding under this Part the court may discharge the order of the judge, and the landlord may in that case proceed by action for the recovery of possession.

Restoring  
tenant to  
possession.

(3) When the order is discharged, if possession has been given to the landlord under a writ of possession, the court may direct that possession be restored to the tenant. R.S.O. 1914, c. 155, s. 78.

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## FORM 1.

(Section 33.)

### NOTICE TO TENANT.

Take notice that I claim \$ \_\_\_\_\_ for rent due to me in respect of the premises which you hold as my tenant, namely (*here briefly describe them*); and unless the said rent is paid, I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me possession of the said premises within three days after the service of this notice, I am by *The Landlord and Tenant Act* entitled to seize and sell, and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

Dated this                      day of                      , 19                      .

A. B. (landlord).

To *C.D.* (*tenant*).

R.S.O. 1914, c. 155, Form 1.

## FORM 2.

(Section 34.)

## NOTICE TO LANDLORD.

Take notice, that under *The Landlord and Tenant Act* I wish to set off against rent due by me to you, the debt which you owe to me on your promissory note for dated \_\_\_\_\_ (or as the case may be).

(or as the case may be).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*C.D. (tenant).*

R.S.O. 1914, c. 155, Form 2.

## FORM 3.

(Section 77.)

## WRIT OF POSSESSION.

ONTARIO,

To Wit:

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain, Ireland, and the Dominions beyond the Seas, King, Defender of the Faith.

[L.S.]

To the Sheriff of the

Greeting:

Whereas

Judge of the

Court

of , by his order dated the  
day of , 19 , made in pursuance of *The  
Landlord and Tenant Act*, on the complaint of  
against , adjudged

that was entitled to the possession  
of  
with the appurtenances in your Bailiwick, and that a Writ should  
issue out of Our said Court accordingly (*if costs are awarded add*  
and also ordered and directed that the said  
should pay the costs of the proceedings had under the said Act,  
which have been taxed at the sum of ).

THEREFORE, WE COMMAND YOU that without delay you cause the said  
to have possession of the said land  
and premises, with the appurtenances (*if costs are awarded add* and  
We also command you that of the goods and chattels and lands and  
tenements of the said  
in your Bailiwick, you cause to be made  
being the said costs so taxed and have that money in Our said  
Court immediately after the execution hereof, to be rendered to  
the said ).

And in what manner you shall have  
executed this Writ make appear to Our said Court, immediately  
after the execution hereof, and have there then this Writ.

Witness,  
Court at  
of

Judge of Our said  
day  
, this  
, 19 .

Clerk.

Issued from the office of the Clerk of the County (or District)  
Court of the County (or United Counties, or District) of

Clerk.

R.S.O. 1914, c. 155, Form 3.